

Kansas Senate Utilities Committee
Testimony of Citizens' Utility Ratepayer Board
Proponent's Testimony
Senate Bill 69
February 20, 2019

My name is David Nickel, Consumer Counsel for the Citizens' Utility Ratepayer Board (CURB). CURB supports Senate Bill 69, insofar as it calls for a study pertaining to utility regulation in Kansas.

I came to Topeka three years ago. I left a private law practice to become Consumer Counsel for CURB. This new job excited me as I thought it may provide a way for me to utilize my education and training in the fields of public administration and business, in addition to still practicing law. I hoped that I could make a difference for ratepayers. I still hope so.

Interestingly, upon my first two years of monitoring utility legislation in Kansas, I learned that most stakeholders are not satisfied with the *status quo*. Some are unhappy with utility rates in Kansas. Others are concerned that we are not doing enough for residential solar or electric vehicles (EVs). Some are unhappy with efforts made regarding energy efficiency. Not only have I heard from customers who are unsatisfied with the *status quo*, but also I believe that the utilities themselves believe that the regulatory system is not perfect. Frankly, all stakeholders long for a better system. While few want to eliminate the regulatory scheme entirely or even substantially, some look for slight modifications to address needs from time to time. That desire to improve the system is good. Every system, good or bad, can be improved.

Certainly, Kansas utility rates and practices can be improved. As has been noted, electric utility rates in Eastern Kansas are the highest in the region. The average electricity charge between Westar Energy, Inc. (Westar) and Kansas City Power & Light Company (KCP&L) is over 30% higher than the average electricity charge for Southwestern Electric Power Company of Arkansas, Public Service Company of Oklahoma, MidAmerican Energy of Iowa and Public Service Company of Colorado. The average electricity charge between Westar and KCP&L is higher than any one of those utilities. While the KCC rate study discusses why that has occurred, the question should arise if there is anything that feasibly can be done to keep Kansas electric rates more competitive with other states.

In these regards, the economic and regulatory environments that Kansas utilities exist in today are much different from the economic and regulatory environments that existed when the Public Utilities Act (K.S.A. 66-101, *et seq.*) was enacted. From the early days of utility regulation through the early 1970s, economic and utility growth was prevalent. In fact, in the 1960s and early 1970s, utilities could count on steady seven percent growth. Rate cases dealt with routine issues and generally involved refunds of rates or very low rate increases. There were several gas and

electric utilities doing business in Kansas. Investor owned utilities generated power; generally, there was no co-generation in Kansas until the late 1970s.

In contrast, today's regulatory environment involves declining or flat utility sales, rising costs and challenging regulatory issues, which include compliance with environmental and other regulatory edicts from federal regulatory agencies or the United States Congress. Utilities must comply with the Clean Power Act, orders from the Federal Energy Regulatory Commission, among other imperatives. Moreover, the Southwest Power Pool or SPP (among other Regional Transmission Organizations – or RTOs) has created an integrated marketplace for power generation, whereby power generated by utilities is pooled and sold to various utilities in SPP. Furthermore, co-generation has grown by virtue of the solar power industry. Most people believe that once solar batteries become efficient, residential solar power will be a disruptive force concerning which IOUs must adapt. Energy efficiency is a hallmark of most appliances and has created an awareness that our environment matters; it is a source of declining utilities sales. Even automobiles will increasingly use electricity as a power source, and technology surrounding electric vehicles is evolving rapidly. In short, we live in a very dynamic economic environment.

Yet, for the most part, our utility regulatory system generally involves a 240-day process whereby an application is filed before the Kansas Corporation Commission (KCC), the Commission staff and other stakeholders evaluate the application and all present evidence on the pertinent issues before the Commission decides the application. There are exceptions to this process, such as various surcharges where there is an expedited review period by the KCC staff. However, these surcharges involve less regulatory evaluation and strike at the heart of the concept of regulatory lag, which has been a means of attempting to make utilities more competitive.

Importantly, the regulatory process in Kansas is, for the most part, quasi-judicial (meaning a procedure that mimics the court process) rather than quasi-legislative (which is a process that mimics how policies are set by the Kansas Legislature). In order to afford due process rights in a quasi-judicial proceeding, substantial time is expended in determining parties' rights and responsibilities. However, in our world where utilities must be competitive and adapt to very rapidly changing developments, the current regulatory model in Kansas may not be the best. Thus, it may be beneficial to find a process where KCC decisions can be made more rapidly while keeping regulatory oversight keen.

It is very important to note that the KCC and its staff have been extremely dedicated and efficient in performing under the *status quo*. It would be unfair and inaccurate to assert that the KCC and its staff has failed in their duties under Kansas law to regulate utilities under KCC jurisdiction. Yet, due to the dynamic nature of the economic environment and federal regulations, regulation of Kansas utilities has become very challenging. In CURB's view, an investigation into how the KCC could have the regulatory tools to cope with these rapid changes is a worthwhile venture.

Indeed, some could assert that Kansas lags behind other states in dealing with some of the issues facing the utility industry today. As noted earlier, CURB is aware that some believe that Kansas is not doing everything it can to incent energy efficiency. Some also assert that regulations

pertaining to distributive generation need to be improved. It is beneficial to look at how Kansas compares to other states on these issues.

With respect to energy efficiency, the American Council for an Energy-Efficient Economy ranks Kansas 46th out of the 50 states and the District of Columbia. Kansas electric utilities have very few active energy efficiency programs. In Kansas, no energy efficiency programs aim at weatherizing multi-unit housing and low-income housing. The last docket in which the Commission conducted a general investigation on energy efficiency ended in 2008, although there have been a few updates.

With respect to individual solar, Kansas is behind other states. Sources show that installed solar capacity in 2017 in Kansas was 16 MW while Colorado had 1055 MW and Iowa 71 MW. Job growth and ranking through clean energy has been determined to be .03% and No. 42. The U.S. solar industry generated \$154 billion in economic activity in 2016, including direct sales, wages, salaries, benefits, taxes and fees. Its revenues have grown from \$42 million in 2007 to \$210 million in 2017. Yet very little of that economic activity has been felt in Kansas, despite that Kansas is one of the most favorable states for generating solar power.

Should Kansas be satisfied with these facts? If not, what changes can be made? More importantly, how would the State of Kansas go about determining these issues?

Senate Bill 69 provides an answer to these questions. Senate Bill 69 proposes that the legislative coordinating council authorize a study of the retail rates of Kansas electric public utilities in Kansas. The study would be conducted by one or more independent organizations selected by the legislative coordinating council. Senate Bill 69 outlines the scope of the study as having a minimum of 36 issues to be addressed within four broad areas of inquiry. The cost of the study or studies would be paid by the KCC from an assessment of expenses pursuant to K.S.A. 66-1502.

In short, Senate Bill 69 answers the question of how would the state of Kansas go about determining whether Kansans should be satisfied with the current status of utility regulation in Kansas and if not, what changes can be made. Senate Bill 69 specifies that the results of the study would be completed and delivered to the Kansas House Energy, Utilities and Telecommunications Committee and the Kansas Senate Utilities Committee by December 31, 2019. While CURB supports the study in Senate Bill 69, CURB notes that the scope of the study is very large and the period for reporting the results to the Kansas legislature may be unrealistically short. Indeed, there are several study issues outlined in Senate Bill 69 that have been the focus of the KCC study or other studies previously conducted. To CURB, these areas of inquiry may not provide a benefit that outweighs the cost of further study.

However, there certainly are study areas that are of interest to CURB. Principal among these are questions concerning whether or not current Kansas ratemaking practices are as efficient as they need to be given the dynamic economic and regulatory environments that affect Kansas utilities. CURB does not suggest that the KCC or its staff has failed to follow Kansas law regarding utility regulation or have done so in any ineffective or inefficient manner. Rather, CURB believes simply that it is worthwhile to inquire whether the KCC has all the tools it needs to regulate utilities

into the future to determine, given changes in the economic and regulatory environment? This major issue leads to at least three additional issues of importance to CURB. First, is Kansas doing what it feasibly and economically can to encourage energy efficiency? Secondly, is Kansas rate structure an unnecessary disincentive to distributive energy? Finally, how should Kansas address the upcoming development of EVs?

Kansas would not be a pioneer in conducting a study of its regulatory system. Indeed, the Ernest Orlando Lawrence Berkeley National Laboratory reported in 2015 (three years ago) that many regulators, utilities, customer groups and others have reevaluated their regulatory models and the financial implications for electric utilities in the context of the current economic and regulatory environments. Many states understand the fundamental changes that distributive energy, energy efficiency and other developments will cause to the regulatory paradigm. These states desire to get ahead of these changes, plan for them and take appropriate measures. Why not Kansas?

Senate Bill 69 does not direct the method by which the study would be conducted. Certainly, the issues that pertain to current rates could be evaluated in many ways. CURB will not offer any particular manner in which it believes such a study would be most effective. However, as to studying whether or not there are regulatory tools which the KCC could bring to bear on developing issues of energy efficiency and distributive generation, CURB suggests that the study begin with a comparison of what other states are doing in these arenas. It would encompass the determination of whether those state measures are efficacious. It would encompass the determination of whether other state measures can be feasibly implemented in Kansas. It would likely involve a cost-benefit analysis.

This type of study (and CURB is not suggesting that the study under Senate Bill 69 should be so limited) is akin to the concept of benchmarking. For those unfamiliar with benchmarking, it is the process of identifying organizational goals, understanding the processes of how these goals are met, discovering how other like organizations are using processes more effectively in meeting similar goals, and adapting that learning to improve goal performance. There are several types of benchmarking. One of these is known as industry benchmarking in which the benchmarking partners are not direct competitors but does share the same industry. To put this into the utility regulatory context, other public utility commissions are not direct competitors to the KCC, but they similarly deal with public utilities.

Kansas already does this type of benchmarking in an informal fashion. Kansas is an active participant in the National Association of Regulatory Utility Commissioners (NARUC). There are a number of NARUC meetings every year and these provide a means by which Kansas can learn what other public utility commissions are doing to confront developing utility issues. CURB sees Senate Bill 69 as merely placing a scope upon this type of study and formalizing the same. Importantly, Senate Bill 69 proposes that the study be conducted by an independent source. This is important for two reasons: First, it frees the KCC to continue to regulate Kansas utilities without having to dedicate time and resources to the Senate Bill 69 study. Second, it provides the Kansas legislature with a fresh and independent look at the issues and solutions. We all have biases. Obviously, biases can limit how one looks at a problem and what solutions are appropriate. Yet,

even if we discounted these biases, having an independent study eliminates the question as to whether or not the study and results have been influenced by a stakeholder's bias. It lends credence to the report and potential solutions contained in the study. CURB believes that the KCC and its staff should have an active part in determining the list of the parties that could conduct the study, but that the legislative coordinating council would actually select the party or parties to conduct that study from the list.

Other governmental entities are actively using benchmarking as a method to improve governmental efficiency. Indeed, benchmarking is a particularly hot topic in local governance. This exuberance is justified. Benchmarking can allow governmental agencies to compare their performance among peer groups. It allows for the reporting of performance over a given period. It identifies areas for improvement, allows collaboration among peer groups and incents keeping up with current trends.

There are several steps to be taken to ensure that benchmarking is effective. It is beyond the scope of this testimony to outline these. However, it is important that the goals to be accomplished be formulated carefully. In these regards, CURB believes that the scope of the study outlined in Senate Bill 69 should be more focused than having at least 36 areas of inquiry. CURB suggests that the Kansas legislature take into account the areas in which a study conducted has already been conducted. The Kansas legislature could then limit the study to those areas needing additional study and which are most pertinent to current issues. All stakeholders should have input in this evaluation.

Can Kansas benefit by comparing its regulatory practices to other public utility commissions in the United States? CURB believes so. If one were to survey state regulatory practices among the fifty States, one would most likely find fifty different regulatory schemes. Importantly, some of the regulatory schemes employed by states other than Kansas may be better than Kansas. Even if the regulatory schemes of other states are inferior to Kansas or cannot be implemented feasibly, to CURB, it is worth the costs of observation and comparison. Some of the interesting regulations of other states is set out in the paragraphs below.

One example of where a state differs from Kansas is in the process of electric vehicles. Kansas has regulated electric vehicle infrastructure under traditional regulation to date. In contrast, Colorado has adopted an EV plan. In the plan, there are a number of actions outlined. First, the plan seeks to build out Colorado's EV fast-charging infrastructure through public-private partnerships. Second, Colorado seeks to support interstate EV travel and a consistent user experience across the Intermountain West. Third, Colorado seeks to develop new strategic partnerships that support greater investment in EV fast-charging and to increase utilization of fast-charging infrastructure. Fourth, Colorado seeks to improve signage policies and requirements to increase public wayfinding and awareness of EV fast-charging corridors. Finally, Colorado seeks to leverage the benefits associated with the adoption of EVs by encouraging creative partnerships and other means. These actions are intended to result in several goals being met, including the achievement of 940,000 EVs in Colorado by 2030.

With respect to energy efficiency, Kansas has the Kansas Energy Efficiency Investment Act (KEEIA). However, since its enactment, the KEEIA was utilized one time and it did not lead to additional energy efficiency measures being implemented in Kansas. In contrast, the state of Iowa requires electric and gas public utilities to offer energy efficiency programs to their customers through energy efficiency plans. The energy efficiency plans are required to be cost-effective as a whole, utilizing a number of tests that are outlined as the societal test, total resource cost test, utility cost test, ratepayer impact test, and participant test. Iowa law requires energy efficiency programs offered by rate-regulated gas and electric utilities to be approved by the Iowa Utilities Board.

Vermont implements energy efficiency through an independent utility, Efficiency Vermont. Founded in 2000, it is the nation's first energy efficiency utility. Efficiency Vermont functions as Vermont's objective advisor on saving energy through efficiency. It provides Vermont citizens with technical services and financial support to improve their homes, businesses, and communities. Efficiency Vermont boasts that for every dollar invested in energy efficiency in 2017, \$2.10 was saved.

In the important area of reliability, the Oklahoma Corporation Commission (OCC) prepares an annual reliability scorecard. The OCC reports the reliability of regulated electric utilities upon two basic gauges of electric service reliability – System Average Interruption Frequency Index (“SAIFI”) and System Average Interruption Duration Index (“SAIDI”) – to gain insights regarding how consistently the state's regulated electric utility systems are providing uninterrupted energy. In its report, the OCC evaluates six electric utilities regulated by it. The OCC notes that the SAIFI measure indicates that an Oklahoma customer being served by a regulated electric utility experienced an average of approximately 1.478 outages in 2017. The SAIDI measure indicates that customers served by Oklahoma's regulated electric utilities were without power during 2017 for an average of approximately 186.86 minutes or 3.114 hours. This reporting mechanism is consistent with better regulation through transparency.

Could Kansas benefit from looking at the efficiencies of comparable utility commissions such as these posited above? CURB believes so. However, even if it is determined that Kansas has superior regulations, it is worthwhile to have independent verification of the same. Moreover, with the rapidly evolving economic and regulatory environments, comparing how other public utility commissions are coping is worth the effort. For these reasons, CURB supports the study contained in Senate Bill 69.